

### **Remarks**

Claims 1-11 were pending in this application and have been rejected. By way of this amendment, claims 1, 3-9 and 11 have been amended to more fully claim the subject invention and new claims 12 and 13 have been added. Support for the claims amendments and new claims can be found in the originally filed specification, claims and Figures at least at, for example, page 11, lines 22-25 of the corresponding International PCT application no. PCT/IB2003/005110. *No new matter has been added.*

The foregoing amendments were made solely in an effort to expedite prosecution and allowance of the present application. The applicants reserve the right to pursue the claims as originally filed in this or a separate application(s).

Accordingly, upon the entry of the present amendment and response, claims 1-13 will remain pending.

### **Indefiniteness Rejection Under 35 USC § 112, Second Paragraph**

Claims 1-11 have been rejected under 35 USC § 112, second paragraph, as allegedly being indefinite on the following grounds.

The Office is of the opinion that the term “discharge” or “discharging” is indefinite because these terms are “used by the claim to mean ‘open/opening,’ while the accepted meaning is ‘to relieve of a charge, load, or burden, such as discharging a liquid from a passage.’ The term is indefinite because the specification does not clearly redefine the term.” (*See* page 2 of the Office Action mailed 8/28/07).

Applicants respectfully traverse this rejection. Applicants submit that it is clear from the Federal Circuit legal precedent that, claim language must be analyzed, not in a vacuum, but in the light of the content of the particular application disclosure. For example, an applicant may describe an invention not simply by words but by also using other descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

In view of the aforementioned legal precedent, Applicants submit that the correct inquiry is not whether the Applicants have redefined a certain claim term but whether the meaning of such term would be clear in light of the content of the particular application disclosure as a whole, including the figures. For example, based on the figures in the specification as filed (*see*, for example, at least Figures 1 and 2) coupled with the description of the figures, it would be abundantly clear to one of ordinary skill in the art that a mechanical support according to the invention includes a passage with two ends, one end opening (or discharging) external to the reception surface and the other end opening (or discharging) into the reception surface.

Accordingly, when the claim terms “discharges” and “discharging” are considered in light of the *specification as a whole*, it would have been abundantly clear to one of ordinary skill in the art as to what is meant by these terms, and, accordingly, Applicants respectfully request that this rejection be reconsidered and withdrawn.

The Office has further taken the position that the pronoun “they” in the claims used to represent the ‘selectively operable means’ is confusing. *Id.* Without acquiescing to the validity of this rejection and solely in an effort to expedite prosecution and allowance of the pending claims, claim 1 has been amended to delete the pronoun “they,” thereby obviating this rejection.

Additionally, the Office appears to be of the opinion that “it is unclear what is intended to be claimed in claim 1. . . .” (*See*, page 3 of the Office Action mailed August 28, 2007). Applicants respectfully traverse this rejection. As discussed above, claim language must be analyzed, not in a vacuum, but in the light of the content of the particular application disclosure. Accordingly, when the claims are read in view of the specification as filed, it would have been abundantly clear to one of ordinary skill in the art that claim 1 is directed to a *mechanical support for a drainage device of a filter unit* provided with a membrane, where the mechanical support includes a passage, one end of which discharges externally of a reception surface which faces the membrane and the other end of which discharges onto the reception surface; and selectively operable closure means for opening or closing the passage. Nonetheless, without acquiescing to the validity of this rejection and solely in an effort to expedite prosecution and allowance of the pending claims, claim 1 has been amended, such that to more clearly and fully claim the subject invention.

With respect to claims 4-6, 9 and 10, the Office states that these claims “appear to be repeating what is already claimed in claim 1, reception head and reception surface.” Applicants disagree with the Office’s characterization of these claims. Applicants note that each of claims 4-6, 9 and 10, as pending or amended, are directed to further embodiments of the mechanical support of the claimed invention, as set forth in claim 1. Because these claims depend directly or indirectly from claim 1, they may include certain terms which also appear in claim 1 in addition to the additional embodiments set forth in these claims. As such they do not repeat exactly what is encompassed by claim 1, but may include certain terms set forth in claim 1 in order to clarify the relationship of the additional embodiments to the ones encompassed by claim 1. In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of this rejection.

With respect to claim 7, the Office has taken the position that the language key means for forming a keying means is unclear. Without acquiescing to the validity of this rejection and solely in an effort to further prosecution and allowance of the claims, claim 7 has been amended to impart structure to the key means, thereby obviating this rejection. Based on the corresponding description and Figures in the specification as filed, it would have been abundantly clear to one of ordinary skill in the art as to what the function of such key means would be. *See*, for example, Figure 4 and page 11, lines 22 through page 12, line 7 of the corresponding International PCT application no. PCT/IB2003/005110.

Accordingly, Applicants respectfully request that this rejection be reconsidered and withdrawn.

Lastly, claim 11 has been rejected on the ground that there is no antecedent basis for the terms “chamber” and “the portion opposite said reception surface.” Claim 11 has been amended to replace “chamber” with “reception surface,” and “the portion opposite said reception surface” with “a portion opposite said reception surface,” thereby obviating this rejection. The Office has further requested a clarification regarding the occurrence of hyphens in the text of claim 11. Claim 11 has been amended to delete such hyphens, thereby obviating this rejection.

Claim 11 has further been amended to specify a particular “key means” thereby addressing the Office’s concern with respect to an alleged lack of function for this term.

#### **Anticipation Rejection Under 35 USC § 102(e)**

Claims 1-5 and 7-11 have been rejected as allegedly being anticipated under 35 USC §102(e) by, or in the alternative, under 35 USC §103(a) as being obvious over U.S. Patent No. 6,884,341, in the name of Ferguson (hereinafter referred to as “*Ferguson*”) on the ground that *Ferguson* “teaches a vacuum filter system having a reception surface which holds a filter, a vacuum connection (see figures 2a-c and 3a-c), a pressure sensor in a passage which vents to the outside, and a filter in the reception surface.” (See, page 4 of the Office Action mailed 8/28/07). Further, the Office acknowledges that *Ferguson* does not specifically teach a solenoid valve (see page 4 of the Office Action mailed 8/28/07), however, takes the position that it teaches a pressure sensitive check valve in figure 3a-b and vent 214 with valve 213 in figure 2b-c and that this teaching is considered equivalent to the “valve means” claimed. *Id.*

Applicants respectfully traverse this rejection. For a prior art reference to anticipate a claimed invention under 35 U.S.C. §102, the prior art reference must teach ***each and every limitation*** of the claimed invention. See, *Lewmar Marine v. Barient* 827 F.2d 744, 3 USPQ2d 1766 (Fed. Cir. 1987).

It appears that the Office has taken the position that the claimed device is either disclosed in or is an equivalent of the device disclosed in *Ferguson*. Applicants respectfully disagree. As discussed in detail *infra*, *Ferguson* is directed to a device which is both structurally as well as functionally different from the device of the claimed invention and, accordingly, fails to teach or suggest each and every limitation of the claimed invention.

Applicants note that the claimed invention is directed to a device which performs a very different function than the device of *Ferguson*. For example, the ***mechanical support*** of the claimed invention is ***designed for protecting the filter membrane during mounting and such that the filter membrane is dried after filtration***. See, for example, page 2, lines 2-5 of the corresponding International PCT application no.

PCT/IB2003/005110. In contrast, the *filter apparatus* of *Ferguson* is *designed to capture a desired amount of material suspended in a liquid or a gas*. See Abstract. Consequently, the two devices inherently have very different structures in order to enable them to perform their corresponding functions. Furthermore, as discussed below in detail, *Ferguson* fails to teach or suggest several structural features of the claimed invention or equivalents thereof.

For example, in the device of the claimed invention, the filter unit and the mechanical support are separate parts, where *the filter unit includes a membrane and is adapted to be mounted on the mechanical support*, where the membrane faces a reception surface of the mechanical support. In contrast, the filter apparatus of *Ferguson* includes *a membrane deposited between a top body member and a bottom body member*. Accordingly, as such, the filter apparatus of *Ferguson* does not include a filter unit which includes a filter membrane facing a reception surface of a mechanical support and where the filter unit is adapted for mounting on to the mechanical support. Furthermore, even if *arguendo*, *Ferguson* disclosed structures that were equivalents of a filter unit and a mechanical support of the instant case, one of ordinary skill in the art would have reasonably concluded that it is the upper body member which is an equivalent of the filter unit as it includes, in various embodiments, a membrane attached to the bottom of the upper body member, which then faces the bottom body member, arguably, an equivalent of the mechanical support.

Notably, even given the aforementioned alleged equivalents, there is no teaching or suggestion in *Ferguson* of a mechanical support for a drainage device of a filter unit which includes, at least in part, (1) a passage, one end of which discharges externally of a reception surface facing the membrane which is provided in the filter unit, and the other end of which discharges onto the reception surface; and (2) selectively operable closure means movable between a first position to close the passage and a second position to open the passage, as recited in claim 1.

For example, the only passage in *Ferguson* includes an inlet port (found in the bottom body member) and an outlet port (found in the upper body member). Even if, *arguendo*, the bottom body member were to be construed to be an equivalent of the mechanical support of the claimed invention, there is no passage in the bottom body member of *Ferguson*, one end of which discharges externally of a reception surface facing the membrane and the other end of which discharges onto the reception surface. In contrast, the inlet port or passage found in the bottom body member only discharges onto a surface facing the filter membrane. Furthermore, there is also no structure in the bottom body member which could be construed as an equivalent of the selectable operable closure means, as recited in the claims.

In view of the foregoing, Applicants submit that *Ferguson* fails to teach, disclose or suggest the claimed mechanical support of the instant invention or any equivalents thereof, and accordingly, request reconsideration and withdrawal of this rejection.

**Conclusion**

In view of the foregoing amendments and arguments, allowance of the instant application with all pending claims is respectfully solicited. If a telephonic conversation with Applicants' attorney would help expedite the prosecution of the above-identified application, the Examiner is urged to call the undersigned at the number below. Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account no. 13-3577.

Respectfully submitted



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